



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV - 5 2007

Brian Rothenberg
Ohio Democratic Party
271 East State Street
Columbus, OH 43215

RE: MUR 5775R
Deborah Pryce,
Deborah Pryce for Congress and
Robert J. Peck, in his official
capacity as treasurer

Dear Mr. Rothenberg:

This is in reference to the complaint you filed with the Federal Election Commission on July 25, 2006, concerning Deborah Pryce, Deborah Pryce for Congress and Robert J. Peck, in his official capacity as treasurer. After considering the circumstances, the Commission dismissed this matter and closed the file on October 25, 2007. The Factual and Legal Analysis explaining the Commission's decision is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan
General Counsel

A handwritten signature in black ink, appearing to read "Susan L. Lebeaux".

BY: Susan Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

28044183594

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4
5
6
7 **RESPONDENTS:** Deborah Pryce **MUR 5775R**
8 Deborah Pryce for Congress
9 and Robert J. Peck, in his official capacity as treasurer

10 **I. GENERATION OF MATTER**

11 This matter was generated by a complaint filed with the Federal Election
12 Commission by Brian Rothenberg, Ohio Democratic Party. *See* 2 U.S.C. § 437g(a)(1).

13 **II. FACTUAL SUMMARY**

14 The complaint in this matter alleges that Deborah Pryce and Deborah Pryce for
15 Congress and Robert J. Peck, in his official capacity as treasurer, ("the Committee")
16 violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing
17 to fully comply with the "stand by your ad" disclaimer requirements in connection with a
18 television advertisement the Committee aired during the 2006 election cycle.
19 Specifically, the complaint alleges the advertisement did not include an oral statement
20 that identifies the candidate and states that the candidate has approved the
21 communication, pursuant to 2 U.S.C. § 441d.

22 Deborah Pryce was the incumbent candidate running in Ohio's 15th Congressional
23 District in the 2006 election. According to the complaint, the Committee ran an
24 advertisement in support of Pryce's reelection starting on Friday, July 21, 2006 on ten
25 cable channels. *See* Complaint ¶¶ 4, 5. The complaint included a DVD recording of the
26 advertisement as it aired on Fox News. The advertisement opened with images of Pryce
27 and a voice-over of Pryce discussing jobs in Ohio. A male voice-over then introduced
28 Pryce and discussed her accomplishments while in Congress. The advertisement had a

28044183595

28044183596

1 written disclaimer at the end, stating, "Paid for by Pryce for Congress and approved by
2 Deborah Pryce." Nowhere in the advertisement did Deborah Pryce introduce herself or
3 orally state that she approved the message.

4 The response states that the cable company was responsible for the missing oral
5 statement by the candidate. Response at 2. According to the response, the advertisement
6 when originally produced included Pryce introducing herself and orally stating she
7 approved the message, but the cable system's master control tape operator upcut the
8 beginning of it and caused the first few seconds of the advertisement to be omitted. *Id.*
9 The Committee provided a copy of the original advertisement with its response. The first
10 few seconds feature an image of Pryce and a voice-over of Pryce saying "I'm Deborah
11 Pryce. I approve this message." The response states that on Monday, July 24, 2006, the
12 Committee contacted the cable provider to inquire about the missing disclaimer.¹ With
13 its response, the Committee provided a letter dated July 25, 2006 from Rich Ambrose,
14 Time Warner Cable's Vice President of National Sales, apologizing for the error. *See*
15 Ambrose Letter. The letter explains the cable company's error and states that the
16 advertisement, as originally recorded, would air starting at 6:00 p.m. on July 25, 2006.

17 **III. ANALYSIS**

18 The complaint alleges that the Pryce advertisement failed to include the requisite
19 oral "stand by your ad" disclaimer. The Act requires that whenever a political committee
20 makes a disbursement to finance a broadcast communication through any broadcasting
21 station, the communication shall clearly state that the authorized political committee paid

¹ On that same day, the Ohio Democratic Party released a statement that it was filing a complaint with the Commission because the Pryce advertisement did not contain the oral "stand by your ad" disclaimer. The Commission has no information indicating that the Committee was or should have been aware of the error prior to July 24, 2006.

28044183597

1 for the communication. 2 U.S.C. § 441d(a)(1). In addition to this requirement, the Act
2 specifies that television advertisements must include a candidate's oral statement that
3 identifies the candidate and states that the candidate has approved the communication.
4 2 U.S.C. § 441d(d)(1)(B). This statement can be made in one of two ways: "an
5 unobscured, full-screen view of the candidate making the statement" or "the candidate in
6 voice-over, accompanied by a clearly identifiable photograph or similar image of the
7 candidate." 2 U.S.C. § 441d(d)(1)(B)(i). The communication also shall include the same
8 statement in writing, at the end of the communication. 2 U.S.C. § 441d (d)(1)(B)(ii).
9 The advertisement in question, as it ran from June 21-24, 2006, contained the requisite
10 written disclaimers but lacked the candidate's oral "stand by your ad" message, due to the
11 vendor mistakenly cutting off the first few seconds of the advertisement.

12 In several recent matters, the Commission has considered television
13 advertisements that are in partial compliance with the "stand by your ad" disclaimer
14 requirements. In ADR 347/MUR 5727 (Kaloogian/Roach), the candidates' committees
15 aired television advertisements in which the candidates introduced themselves and
16 verbally stated they approved the communications. The advertisements also included
17 written disclaimers at the end, stating that the candidates' committees paid for the
18 advertisements. The advertisements, however, did not contain written statements at the
19 end that the candidates approved the communications. Under these circumstances, the
20 Commission voted to dismiss the matters.

21 Similarly, in MUR 5629 (Newberry), the candidate's television advertisements
22 only partially complied with the "stand by your ad" disclaimer requirements. In five
23 advertisements, the candidate or his image appeared, he identified himself and he stated

28044183598

1 that he approved the communication. However, the advertisements lacked written
2 statements at the end identifying the candidate and stating that he approved the
3 communication. The Commission decided to take no further action and closed the file.²

4 Most recently, in MUR 5834 (Darcy Burner for Congress), the Burner Committee
5 ran a television advertisement from August 10, 2006 through August 24, 2006 in which
6 the candidate stated, "I'm Darcy Burner and I approve of this message." In addition, a
7 printed disclaimer appeared at the end of the advertisement, which stated "Paid for by
8 Darcy Burner for Congress." The advertisement, however, did not contain a written
9 statement that the candidate approved the advertisement. When the Burner Committee
10 noticed the error, it immediately contacted the vendor and corrected the disclaimer.
11 Based on these facts, the Commission voted to dismiss the matter.

12 The Pryce advertisement is similar to those in ADR 347/MUR 5727
13 (Kaloogian/Roach), MUR 5629 (Newberry) and MUR 5834 (Burner) in that it complied
14 partially with the "stand by your ad" disclaimer requirements in 2 U.S.C. § 441d. The
15 Pryce advertisement differs in that the missing statement by the candidate was the oral
16 statement whereas those missing in the other matters were the written statements.
17 Nonetheless, as in the other matters, it appears that viewers were apprised of the salient
18 information. They would know who Deborah Pryce is, because she is introduced by the
19 male voice-over. They would know that she approves the message because she is the
20 only candidate featured, she appears in almost every frame, and the advertisement states
21 in writing at the end that she approved it.

² Although the Commission found reason to believe that the respondents in MUR 5629 violated 2 U.S.C. § 441d it voted to take no further action following its decision in ADR 347/MUR 5727 (Kaloogian/Roach), discussed *supra*

28044183599

1 In addition, this matter involves inadvertent vendor error. In the most recent case
2 involving inadvertent vendor error, MUR 5580 (Alaska Democratic Party), the Alaska
3 Democratic Party ("ADP") mailed letters without disclaimers to voters supporting
4 Democratic candidates. The printer of the mailings confirmed that the original letter
5 from the ADP included the required disclaimer in the footer, but that it was inadvertently
6 deleted and did not appear on the final mailing. The Commission found reason to believe
7 that the ADP violated 2 U.S.C. § 441d, sent an admonishment letter, and took no further
8 action.³

9 Here, the Committee's vendor confirmed it was at fault by inadvertently cutting
10 off the verbal disclaimer at the beginning of the Pryce advertisement. Although the
11 television advertisement was aired on multiple cable stations for several days, and may
12 have been viewed by large numbers of people, it appears that the missing disclaimer
13 stemmed from a single inadvertent vendor error.

14 Under the totality of the circumstances, the Commission dismisses the allegation
15 that Deborah Pryce and Deborah Pryce for Congress and Robert J. Peck, in his official
16 capacity as treasurer, violated 2 U.S.C. § 441d.

³ That matter was decided prior to the Commission's recent issuance of a Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, *see* 72 Fed. Reg. 12,545 (March 16, 2007), in which the Commission clarified that dismissal is appropriate when the evidence is sufficient to support a reason to believe finding, but the circumstances do not warrant the additional use of the Commission's resources. *See also* MUR 4566 (Democratic National Committee) (the Commission took no action where the Democratic National Committee and Democratic Party of Virginia omitted a disclaimer on a direct mailing and the direct mail vendor took responsibility for the error)